IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3209 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

HIRALAL GURUMUKHDAS CHANDWANI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR. KC SHAH, LD. AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 05/08/96

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 15/3/1996 rendered by the 2nd respondent u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of

detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his persons has been carrying on criminal and anti-social activities of storing and selling country liquor and following prohibition offences have been registered in the Naranpura Police Station against him :-

1) 519/95 Secs.66B, 65(E) of Bombay Prohibition Act,
70 litres of country liquor,
Matter pending.

2) 589/95 U/Ss.66B, 65(E), 81 of Bombay Prohibition Act
10 litres of country liquor,
Investigation in progress.

3) 149/96 U/Ss.66B, 65(E) of Bombay Prohibition Act
20 litres of country liquor,
Investigation in progress.

Complaint No. U/S. 93 of the Bombay Prohi. Act, 7/96 -
Matter pending in Court.

4) 193/96 U/Ss. 66B, 65(E) of Bombay Prohibition Act,
32 litres of country liquor
Investigation in progress.

It has been recited that the petitioner's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion 4 witnesses have been relied upon. It has been recited that on account of the criminal and anti-social activities of the petitioner public order is likely to be adversely affected in as much as country liquor is injurious to public health and in as much as in the past many people have lost their lives as a result of such an activity and, therefore, the petitioner being a boot-legger, is carrying on activity, which would obstruct maintenance of public order.

3. The grounds also recite two incidents appearing from the statements recorded by the authority. The first incident is that of 29/2/1996 when at about 4 O'clock in the after-noon one witness was proceeding from the old Vadaj locality. The petitioner and his aids had stopped the witness expressing doubt about witness being a police informant, had assaulted and beaten him, with the result

that the witness had shouted for help. People collected there at the shouts of the witness. At that time the petitioner had brought out his knife and threatened the witness and rushed to the people who had collected there with the result that they dispersed. It is in this manner that the petitioner had caused atmosphere of fear amongst the people collected there. Second incident is of 1/3/1996 when at about 5 O'clock in the evening the witness was present at his home and the petitioner in the company of his persons had asked him to allow storage of the liquor stock brought by him. When the witness refused to accede to the demand of the petitioner, the petitioner got excited and with the help of his persons had dragged the witness near the Old Vadaj Bus Terminus and beaten him. Here also the people collected at the shouts of the witness. The petitioner brought out a razor and he in the company of his persons rushed to the people who collected there, with the result that they dispersed.

4. It is on the aforesaid two incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner.

5. I have heard the learned advocate for the petitioner and learned AGP for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to a conclusion that the same would affect public order. Reliance has been placed on the decision of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, C.P. reported in 1995 (2) G.L.R. p.1268. In that case also 5 cases were referred to in the grounds of detention. They were under Chapter XVI of the Indian Penal Code alongwith the provisions of the Arms Act. Two incidents were quoted from the cases which were referred to in the detention order. The same have been set out in paras. 11 and 12 of the citation. They may be reproduced for the purpose of comparison of the incidents in question :

'This brings us to the criminal activities of the detenu-petitioner which are said to have taken place on 10/8/1994 at 4-00 p.m. and on 12/8/1994

at 7-00 p.m. In the incident dated 10/8/1994 the petitioner is alleged to have purchased goods worth Rs.500/- from a businessman and on the demand of the price of the goods, the petitioner is alleged to have dragged him out on the public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. Similarly, it is alleged that on 12/8/1994 at about 7-00 p.m. the detenu-petitioner stopped the witness on the road near the eastern side of Sardar Garden and beat him as the petitioner doubted that he was informing the police about the anti-social activities of the petitioner and his associates. The petitioner is also alleged to have rushed towards the people gathered there with the revolver. Taking the aforesaid two incidents and the allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. They were incident directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tempo of life or the peace and tranquillity of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. As said earlier, the Act by itself is not determinant of its own gravity but it is the potentiality of the act which matters.

12. The alleged incident dated 12/8/1994 relating to the beating of some person on suspicion that he was informing the police about criminal activities of the petitioner, the allegation is sweeping without any material to support it. Neither any timely report appears to have been made about it to the police nor any offence appearsto have been registered against the detenu-petitioner concerning the said incident. There remains the solitary incident dated 10/8/1994 pertaining to the alleged beating of a businessman which as said earlier directly was against an individual having no adverse impact on public at large. Besides, the solitary incident dated 10/8/1994 alone would not provide a justification to hold that the petitioner was habitually committing or attempting to commit or

abetting the commission of offences as contemplated in Sec. 2(c) of the Act because the expression ' habitually' postulates a thread of continuity in the commission of offence repeatedly and persistently. However, in our considered opinion none of the aforementioned two incidents can be said to be incidents affecting public order nor from these stray and casual acts the petitioner can be branded as a dangerous person within the meaning of Sec. 2(c) of the Act, who was habitually engaged in activities adversely affecting or likely to affect adversely the maintenance of public order. Similar is the position with regard to the recovery of .32 bore country-made revolver from the possession of the petitioner without any permit or licence which is an offence under Sec. 25 of the Arms Act. The said revolver was found to be rusty and had a broken barrel. Mere possession of a firearm without anything more cannot bring a case within the ambit of an act affecting public order as contemplated in Sec. 3 of the Act unless ingredients of Sec. 2(c) of the Act are also made out. From the facts discussed above it turns out that there was no material which may lead to a reasonable and definite conclusion that the detenu-petitioner was habitually engaged in criminal activities and, therefore, a dangerous person. The detaining authority thus passed the impugned order of detention against the petitioner without application of mind on the aforesaid aspects of the case and, therefore, the detention order could not be sustained.'

6. The Apex Court observed that it would be necessary to determine whether besides the person being a 'dangerous person' his alleged activities fall within the ambit of the expression 'public order'. It has observed that a distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to

prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the societyy or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". Referring to the earlier decision in Arun Ghosh v. State of West Bengal reported in 1970(1) SCC 98 it has been observed that the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Reference was also made to another earlier case in Piyush Kantilal Mehta v. Commissioner of Police, 1989 Supp. (1) SCC 322. It has been observed that for saying that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land. Piyush Kantilal Mehta's case (supra) was the case of a boot-legger. There it was made clear that merely because a detenu was a boot-legger within the meaning of sec. 2(b) of the PASA he could not have been provisionally detained thereunder. The emphasis was with respect to whether his activities as a boot-legger would adversely affect the maintenance of the public order.

7. Mr. K.C. Shah, Ld. A.G.P. for the State has in reply referred to an earlier decision of the Supreme Court in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi v. State of Maharashtra & anr. reported in AIR 1992 SC 979. For the purpose of noting the difference between how the activity of a detenu would affect law and order and how the activity of another detenu would affect public at large, it would be of great interest to notice the facts before the Supreme Court in Harpreet Kaur's case (supra) :-

'The police personnel, attached to Matunga Police Station, were maintaining a watch on vehicles

passing the fish market with a view to check transportation of illicit liquor. On 9th September, 1990, a black Fia Car, bearing registration No. BLD 1674, was seen coming from the direction of Chembur at about 0845 hrs. The police party signalled the driver to a stop. Instead of stopping the car, the detenu, who was driving the car, accelerated the car and drove it straight towards the police party giving rise to an apprehension in the mind of the police party that they were likely to be run over and to save themselves they jumped on to the foot-path. While so driving the car towards the police party, the detenu also hurled abuses at them and shouted that he would kill them. The detenu kept driving car recklessly and then dashed against a pedestrian causing him injury and even at that time instead of stopping the car shouted that whosoever would come in his way would be killed. The detenu kept on driving the car recklessly and dashed the car against a stationary taxi damaging it. As a result of the collision the car came to a stop. As soon as the car stopped, the police party, with a view to apprehend the detenu and the other persons sitting in the car rushed towards them. The detenu and two other persons sitting inside the car jumped out and escaped. A police case came to be registered with the Matunga Police Station against the detenu and two unknown persons for offences under Ss. 307, 324 read with S. 34 of the Indian Penal Code. The detenu made himself scarce and could not be immediately arrested. He was eventually traced and arrested on 13th September, 1990, when he made a statement admitting that he was engaged in transporting illicit liquor on 9/9/1990 and also admitted his escape after hitting the pedestrian and the stationary taxi after driving the car towards the police party which signalled to stop him. The detenu was produced before the Metropolitan Magistrate on 14/9/1990 and was released on bail on the condition that he should attend the police station between 6.00 to 8.00 p.m. everyday till 24/9/1990. However, the detenu failed to carry out the condition which led to the cancellation of his bail on 24/9/1990 and he was taken into custody. The detenu then moved the Sessions Court against cancellation of his bail. His application was accepted and he was admitted to bail.

The motor car of the detenu, bearing registration No.BLD 1674, was seized by the police and from the dicky of the car, 12 rubber tubes and from the rear seat of the car 13 rubber tubes, each containing about 40 litres of illicit liquor were recovered. Samples of the seized illicit liquor were sent to the Chemical Analyst whose report, dated 10th of January 1991, indicated that the samples contained ethyl alcohol 34% v/v in water.

During the investigation of the case, the police recorded statements of four witnesses who were, however, willing to make statements only on the condition of anonymity, fearing retaliation from the detenu in case they deposed against him.

Keeping in view the activities of the detenu and the fact that he had been enlarged on bail, the detaining authority on being satisfied that unless an order of detention was made against the detenu, he was likely to indulge in activities prejudicial to the maintenance of 'public order' in future also, made an order of detention on 26th February, 1991. The grounds of detention were served on the detenu. The order of the detention was confirmed by the State Government after considering the report of the Advisory Board constituted under S. 12(1) of the Act. The order of detention was questioned before the High Court, as already noticed through Criminal Writ Petition No. 597 of 1991, unsuccessfully.'

After making a reference to the cases of Ram Manohar Lohia v. State of Bihar, reported in AIR 1966 SC 740 (at pages 758-59), Arun Ghosh v. State of West Bengal, reported in 1970 (1) SCC 98 (at page 100), Madhu Milaye v. Ved Murti, reported in AIR 1971 SC 2486 (at page 2495), Kanu Biswas v. State of West Bengal, reported in AIR 1972 SC 1656 (at page 1659), Ashok Kumar v. Delhi Administration, reported in AIR 1982 SC 1143 (at page 1147) and Subhash Bhandari v. District Magistrate, Lucknow, reported in AIR 1988 SC 74 (at page 77) the Supreme Court observed as under :-

"From the law laid by this Court, as noticed above, it follows that it is the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public

> order'. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of 'public order'. Whenever an order of detention is questioned, the courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to 'public order' or belong to the category of being prejudicial only to 'law and order'. An order of detention under the Act would be valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order'. Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention."

8. In my opinion the facts of the present case are far from the facts in Harpreet Kaur's case (supra) and to an extent they resemble decision in Mustakmiya's case (supra). As a matter of fact, it will be noticed from the two incidents which are quoted from the statements of the witnesses that the concerned witnesses were assaulted in respect of their individual acts, yet there is no FIR or complaint lodged. Hence, in the facts of the present case the decision in Harpreet Kaur's case (supra) would not be applicable. Relying upon the decision in Mustakmiya's case (supra) this petition deserves to be granted.

9. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Mstakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :-

The impugned order of detention is hereby quashed and set aside. The petitioner detenu shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute.

At the request of learned advocate for the petitioner a writ will be issued to the Jail Superintendent, Baroda Central Jail, Baroda.

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